

**ILLINOIS COMMERCE COMMISSION**

**DOCKET NO. 01-0539**

**DIRECT TESTIMONY OF**

**ROD COX**

**on Behalf of**

**MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

**and**

**TDS METROCOM, INC.**

**I. Introduction and Qualifications**

**1. Q: Please state your name, business affiliation and address.**

A: My name is Rod Cox. I am Manager of Carrier Relations for TDS Metrocom, Inc. My business address is 525 Junction Road, Suite 600, Madison, WI. 53717. During a portion of the time workshops were conducted in this docket, I was employed as the Senior Manager of Performance and Compliance at McLeodUSA Telecommunications Services, Inc. (McLeodUSA).

**2. Q: Please describe your business experience and background.**

A: My professional background includes 27 years in the telecommunications industry. My career started in 1974 as a lineman with Illinois Consolidated Telephone Company (ICTC). Since that time, I held various positions at ICTC and later Consolidated Communications Inc. (CCI) before it merged with McLeodUSA Incorporated, the parent company of McLeodUSA, in September of 1997. The majority of my experience has been in operations, including outside plant construction. I have served as

18 a service center supervisor and as a quality facilitator. After CCI merged  
19 into McLeodUSA Incorporated, I was promoted to Senior Manager of  
20 Incumbent Local Exchange Carrier (ILEC) Relations. More recently I was  
21 assigned responsibility for ILEC performance and compliance at  
22 McLeodUSA. In this position, my responsibilities included evaluating the  
23 Operational Support System (OSS) interfaces between ILECs and  
24 McLeodUSA, and monitoring ILEC compliance with performance  
25 standards that were required to enable McLeodUSA to efficiently provide  
26 quality service to its customers. At TDS Metrocom I am responsible for  
27 carrier relations including all aspects of TDS Metrocom's interaction with  
28 Ameritech in Illinois, Wisconsin, Michigan and Ohio. During my  
29 employment with both McLeodUSA and TDS Metrocom, I have been  
30 participating in multiple industry OSS, performance measurement and  
31 remedy plan collaborative efforts throughout the United States, including  
32 remedy plan negotiations among SBC Ameritech and CLECs for the five-  
33 state Ameritech region.

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35 **3. Q: Have you previously testified before any regulatory body?**

36 **A:** Yes, I participated in the Illinois Commerce Commission's (ICC) OSS  
37 merger condition arbitration in September of 2000, in Docket No. 00-  
38 0592. I testified on wholesale service quality issues in this Commission's  
39 proceeding to review Ameritech Illinois' alternative regulation plan,  
40 Docket Nos. 98-0252/98-0335. I also recently testified in ICC Docket No.  
41 00-0120 regarding establishment of a remedy plan for SBC-Ameritech in  
42 Illinois. In addition, I recently testified in ICC Docket No. 00-0596,

43 concerning revisions to Code Part 730, Standards of Service for Local  
44 Exchange Carriers; and in the rehearing of ICC Docket No. 01-0485  
45 concerning certain retail service quality requirements in Code Part 732  
46 and the need for competitive local exchange carriers (CLECs) to receive  
47 support from the ILEC, Ameritech Illinois, in order to meet certain of those  
48 requirements. I testified in the Public Service Commission of Wisconsin  
49 ("Wisconsin PSC") Docket No. 6720-TI-160, which is that state's omnibus  
50 local competition OSS proceeding. I testified in Indiana Utility Regulatory  
51 Commission Cause No. 41998. I also testified in Minnesota Public  
52 Utilities Commission Docket No. P421/AM-00-849, which concerned  
53 adoption of wholesale quality of service requirements for Qwest.  
54 Additionally, I recently was involved in the negotiation and mediation of  
55 the interconnection agreements between McLeodUSA and SBC  
56 Ameritech, and I filed testimony in the dockets related to that arbitration,  
57 including ICC Docket No. 01-0623. Finally, I have filed direct, rebuttal  
58 and surrebuttal testimony in ICC Docket No. 01-0662, which is this  
59 Commission's investigation into Ameritech Illinois' compliance with the  
60 requirements of Section 271 of the Telecommunications Act of 1996.

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62 **4. Q: On whose behalf is your testimony being submitted?**

63 **A:** My testimony is being submitted on behalf of TDS Metrocom and  
64 McLeodUSA. In addition, I am authorized to state that RCN Telecom  
65 Services of Illinois, Inc., has reviewed my direct testimony and is in  
66 agreement with the positions I am stating.

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68       **5.     Q:     What is the purpose of your testimony?**

69       **A:**     The purpose of my testimony is (1) to state the overall position of TDS  
70               Metrocom and McLeodUSA concerning the Staff's final draft rule for 83  
71               Illinois Administrative Code Part 731 (Part 731); and (2) to comment  
72               specifically on proposed Section 731.805 of Staff's draft Part 731.  
73               Section 731.805 sets forth procedures and rules for application of Level 2  
74               requirements to Level 4 Carriers and conversion of Level 4 Carriers to  
75               Level 2 Carriers under Part 731.

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77       **6.     Q:     What is the overall position of TDS Metrocom and McLeodUSA**  
78               **concerning Staff's proposed Part 731?**

79       **A:**     Overall, and with the specific exception of Section 731.805 which I will  
80               address below, TDS Metrocom and McLeodUSA support Staff's proposed  
81               Part 731. We commend the Staff for its efforts in developing its proposed  
82               Part 731. I should note that there may prove to be legal or procedural  
83               issues associated with proposed Part 731 that TDS Metrocom and  
84               McLeodUSA will address in the briefing stage of this docket.

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86       **7.     Q:     Turning to Section 731.805, what are a "Level 2" Carrier and a "Level**  
87               **4" Carrier?**

88       **A:**     As defined in Section 731.115 of the proposed Part 731, a Level 2 Carrier  
89               is a local exchange carrier (LEC) in the State of Illinois that provides  
90               wholesale services and (1) has obligations pursuant to Section 251(c) of  
91               the Telecommunications Act with less than 400,000 subscriber access  
92               lines in service; (2) does not have a pre-existing wholesale service quality

plan; (3) does not have a wholesale service quality plan that has been adopted by the Commission pursuant to Subpart E of Part 731; (4) has not been directed pursuant to a Commission order to comply with the requirements of Subparts B, C, D and E of Part 731; and (5) does not have a currently effective rural exemption under the Telecommunications Act. In short, as I understand it, it is intended that Level 2 Carriers would be ILECs other than Ameritech Illinois and Verizon that do not have a rural exemption. Level 4 Carriers, as defined in Section 731.115(d), are LECs that do not have obligations pursuant to Section 251(c) of the Telecommunications Act and are not Level 3 carriers. As I understand it, it is intended that CLECs would be Level 4 Carriers.

**8. Q: What are your specific concerns with respect to the provisions in Section 731.805 of Staff's proposed rule?**

**A:** My concerns are both with the general nature of these provisions, as well as with the particular method by which they would be applied under the proposed rule. First of all, these provisions would apply in two circumstances, (1) if a Level 4 Carrier were obligated to provide wholesale services, and (2) if a Level 4 Carrier voluntarily agreed to provide wholesale services. With respect to the first possibility, I am not aware of any requirement in the Federal Telecommunications Act, nor under the Illinois Public Utilities Act, that would require a CLEC to provide wholesale services to another carrier.<sup>1</sup> I note that the Staff, in its direct

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<sup>1</sup> I am advised that Section 251(b)(1) of the Telecommunications Act imposes on all telecommunications carriers, including CLECs, a duty not to prohibit, and not to impose

testimony in support of the proposed rule, has not identified any provisions of either statute that would require a CLEC to provide wholesale services.

**9. Q: What about the situation where a CLEC voluntarily provides wholesale services?**

**A:** I cannot see that a CLEC would ever voluntarily agree to provide wholesale services to another carrier, when the outcome of such a voluntary agreement would be to render the CLEC subject to a whole host of new regulatory requirements under Part 731. Since CLECs, unlike Level 1 and Level 2 Carriers (which are ILECs) have not enjoyed the benefits of many decades of state mandated monopoly protection, and are in fact engaged in the difficult task of competing with those ILECs, there is no compelling reason to subject a CLEC to regulation of any wholesale service it may voluntarily choose to provide. If a purchasing carrier is dissatisfied with the wholesale service provided by a CLEC, the carrier will virtually always have at least one other option: it can obtain the service from the ILEC. Of course where an ILEC is providing the wholesale service it is usually doing so under compulsion of Section 251 of the Telecommunications Act, and the purchasing carrier usually has no

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unreasonable or discriminatory conditions or limitations on, the resale of the carrier's telecommunications services. However, McLeodUSA and TDS Metrocom do not regard preventing a CLEC from imposing terms or conditions that would prevent or limit the resale of its services by the original purchaser to be the same thing as imposing an obligation to provide wholesale services. I also note that CLECs are not obligated to provide the "wholesale" discount that ILECs are required to provide under Sections 251(c)(4)(A) and 252(d)(3).

other choice, which creates the entirely logical (and absolutely essential) need for regulation of the ILEC's quality of wholesale service. This is in stark contrast to a situation in which a CLEC voluntarily seeks to offer wholesale services to another carrier. The two carriers are able to negotiate a contract for such services, which may include service level agreements. The proposed Staff rule does not recognize the fact that CLECs and their wholesale carrier customers have been able to work out these business and contractual relationships without the existence of administrative regulations (or the need for legislation that would require CLECs to offer wholesale services and be subject to arbitration when they do not want to offer such services on reasonable terms and conditions) because CLECs have a strong desire to offer wholesale services to other carriers. The draft rule as proposed by Staff would thus have the unintended effect of reducing, rather than increasing competition for wholesale services: by introducing additional regulation where none is needed, Staff's proposed Section 731.805 would create disincentive (i.e., a barrier to entry) for CLECs to ever seek to provide wholesale services to other carriers.

**10. Q: What are your concerns with the particular method for applying Level 2 obligations to Level 4 carriers, as spelled out in Staff's draft rule?**

**A:** Staff's draft Section 731.805 does not provide enough certainty with respect to the criteria to be considered by the Commission when determining whether to apply the Level 2 obligations to a Level 4 Carrier.

For example, Section 731.635 provides that when the Commission is considering whether a Level 2 Carrier should be converted to a Level 1 Carrier, the Commission is directed to a number of criteria it **must** consider before ordering the application of the Level 1 criteria to the Level 2 Carrier. In contrast, when the Commission is considering whether a Level 4 Carrier is to be converted to a Level 2 Carrier, Section 731.805 lists criteria that the Commission **may** apply in considering whether to order the application of the Level 2 criteria to the Level 4 Carrier.

**11. Q: Why is this different level of scrutiny a problem?**

A: Simply put, a Level 4 Carrier is much less like a Level 2 Carrier than a Level 2 Carrier is like a Level 1 Carrier. Both Level 1 and Level 2 Carriers are already subject to the unbundling and other wholesale requirements of Section 251 of the Telecommunications Act. In fact, the only real difference between a Level 1 and a Level 2 Carrier, as defined in the proposed Part 731 rules, is that a Level 2 Carrier serves fewer lines. A Level 4 Carrier is by definition in an entirely different position, in that the Level 4 Carrier does not have an obligation to provide wholesale services under either the Telecommunications Act or the Public Utilities Act. Further, as noted above, a carrier wishing to purchase wholesale services from a Level 4 Carrier will nearly always have an alternative source. Given these relative positions of the various levels of carriers, it would make sense for there to be a greater, not lesser, level of scrutiny before a Level 4 Carrier were subjected to the obligations of a Level 2 Carrier.



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187     **12.   Q:    What are your recommendations concerning Section 731.805?**

188           A:    My principal recommendation is that Section 731.805 should be deleted in  
189               its entirety, unless Staff can demonstrate some provision of either the  
190               Telecommunications Act or the Public Utilities Act that obligates CLECs to  
191               provide wholesale services to other carriers. If such provisions are found,  
192               then Section 731.805 should be limited to situations in which the CLEC is  
193               obligated to provide wholesale services, and voluntary agreements by  
194               CLECs to provide wholesale services should be completely exempt from  
195               any Part 731 obligations. However, if the Commission declines to adopt  
196               this suggestion, then at a minimum Section 731.805 should require the  
197               Commission to consider and make a determination on each of the factors  
198               listed in subsection (a), and should further specify that the Commission's  
199               consideration and determination of these criteria must demonstrate that  
200               application of the Level 2 obligations to the Level 4 Carrier is required.

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202     **13.   Q:    Does this conclude your direct testimony?**

203           A:    Yes.

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